

# STATE BOARD OF ELECTIONS

## STATE OF ILLINOIS

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EXECUTIVE DIRECTOR  
Rupert T. Borgsmiller

**BOARD MEMBERS**  
William M. McGuffage, Chairman  
Jesse R. Smart, Vice Chairman  
Harold D. Byers  
Betty J. Coffrin  
Ernest L. Gowen  
Judith C. Rice  
Bryan A. Schneider  
Charles W. Scholz

### AGENDA

State Board of Elections  
Sitting as the Duly Authorized  
State Officers Electoral Board  
Monday, July 16, 2012  
10:30 a.m.

2329 S. MacArthur Blvd.  
Springfield, Illinois  
and via videoconference  
James R. Thompson Center – Suite 14-100  
Chicago, Illinois

Roll call.

1. Approval of the minutes from the July 9 meeting.
2. Consideration of objections to resolutions to fill vacancies in nomination for the November 6, 2012 General Election;
  - a. *Ostendorf & Hocker v. Polites*, 12SOEBGE100.
3. Recess the State Officers Electoral Board until July 23, 2012 at 10:00 a.m. or call of the Chairman, whichever occurs first.

STATE OFFICERS ELECTORAL BOARD

Monday, July 9, 2012

MINUTES

PRESENT:

William M. McGuffage, Chairman  
Jesse R. Smart, Vice Chairman  
Harold D. Byers, Member  
Betty J. Coffrin, Member  
Ernest L. Gowen, Member  
Judith C. Rice, Member  
Charles W. Scholz, Member

ABSENT:

Bryan A. Schneider, Member

ALSO PRESENT:

James Tenuto, Assistant Executive Director  
Steve Sandvoss, General Counsel  
Bernadette Harrington, Legal Counsel  
Sue Klos, Administrative Assistant II

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The State Officers Electoral Board convened at 10:09 a.m. via videoconference with the Springfield office. Chairman McGuffage and Members Gowen and Rice were present in Chicago. Vice Chairman Smart and Members Byers, Coffrin and Scholz was present in Springfield. Vice Chairman Smart held Member Schneider's proxy.

Member Rice moved to approve the minutes from the June 19th meeting as presented. Member Byers seconded the motion which passed unanimously.

The General Counsel called the cases and accepted appearances for the following objections to resolutions to fill vacancies in nomination for the November 6, 2012 General Election;

- a. *Direso v. Oberline*, 12SOEBGE101; - Matthew Welch present for the objector and Michael Oberline present pro se;
- b. *Worthy v. Pierce*, 12SOEBGE102; - Michael Kasper present for the objector and Gary Pierce present pro se;
- c. *Chiles v. Dearing*, 12SOEBGE103; - John Fogarty present for the objector, no appearance for the candidate; and
- d. *Rakers v. McKerrow*, 12SOEBGE104; - John Fogarty & Charles Rakers present for the objector, no appearance for the candidate;
- e. *Wiss v. Norris*, 12SOEBGE105; - John Fogarty present for the objector, no appearance for the candidate;
- f. *Tozer v. Mazo*, 12SOEBGE106; - John Fogarty present for the objector, no appearance for the candidate;
- g. *Cushman v. Stufflebeam*, 12SOEBGE107; - Jeffrey Jurgens present for the objector, no appearance for the candidate;
- h. *Alexander v. Bradshaw*, 12SOEBGE108; - Michael Kasper present for the objector, Andrew Finko present for the candidate;
- i. *James v. Gray*, 12SOEBGE109; - Matthew Welch present for the objector, Kent Gray present for the candidate;
- j. *Carruthers v. Percy*, 12SOEBGE110; - John Fogarty present for the objector, no appearance for the candidate;

- k. *DeVivo v. Tucek*, 12SOEBGE504; - Matthew Welch present for the objector, Jeff Tucek present pro se
- l. *Abbott & Cabay v. Marks*, 12SOEBGE505; - John Fogarty present for the objector, Mark Agnini for the candidate;
- m. *Storm & Eck v. Hartman*, 12SOEBGE506; - John Fogarty present for the objector, Andrew Finko & John Hartman present for the candidate;
- n. *McSweeney v. Beaubien*, 12SOEBGE507; - John Fogarty & Richard Means present for the objector, Michael Kasper present for the candidate;
- o. *Sloan v. Kossack*, 12SOEBGE508; - Michael Kasper present for the objector, no appearance for the candidate;
- p. *Hartweg v. Kay (Karkusiewicz)*, 12SOEBGE509 - Michael Kasper present for the objector, Daniel Kay (Karkusiewicz) appeared pro se;
- q. *Uzzell v. Evans*, 12SOEBGE510 - Michael Kasper present for the objector, no appearance for the candidate;
- r. *Douglas & Posateri v. Reyes*, 12SOEBGE511 – Michael Kreloff present for the objector, Eric Reyes present pro se;
- s. *Sherman v. Clymer & Goode*, 12SOEBGE512; - Andrew Finko present for the objector, no appearance for the candidate;
- t. *Sherman v. Hawkins*, 12SOEBGE513; - Andrew Finko present for the objector, Michael Hawkins present pro se;
- u. *Sherman v. Anderson & Boyd*, 12SOEBGE514; - Andrew Finko present for the objector, no appearance for the candidate;
- v. *Sherman v. Alexander & Mendoza*, 12SOEBGE515 - Andrew Finko present for the objector, no appearance for the candidate.

The General Counsel presented the Rules of Procedure. Member Scholz moved to approve the Rules of Procedure as presented. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel submitted a memo requesting authorization to appoint hearing officers and assigning to them their respective cases. Chairman McGuffage moved to authorize the General Counsel to appoint the hearing officers as required. Member Rice seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented the consideration of subpoena requests in the matter of Morris V. Montalvo, 12SOEBGE500. Matt Welch appeared for the objector and John Fogarty appeared for the candidate. Vice Chairman Smart moved to accept the recommendation of the Hearing Officer and General Counsel to grant the request in the matter, which was seconded by Member Coffrin. The motion passed by roll call vote of 8 - 0.

The General Counsel then presented the consideration of subpoena requests in the matter of Imhoff v. Collins, 12SOEBGE502. Michael Kasper appeared for the objector and Vincent Geisler & A Christine Swenson appeared for the candidate. Member Rice moved to accept the recommendation of the Hearing Officer and General Counsel to grant part 1 of the request and deny part 2 and 3 of the request, which was seconded by Member Gowen. The motion passed by roll call vote of 7 – 0, with Member Byers voting present.

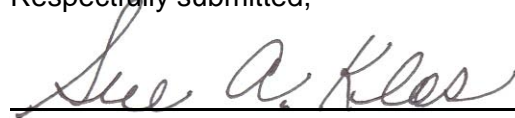
The General Counsel presented the consideration of objections to resolutions to fill vacancies in nomination in the matter of Witzleb v. Boken Jr., 12SOEBGE501. The General Counsel concurred with the Hearing Officer's recommendation to overrule the objection and grant the Motion

to Strike. Chairman McGuffage moved to accept the Hearing Officer and General Counsel's recommendation, which was seconded by Member Scholz and passed by roll call of 8 – 0.

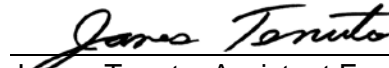
The General Counsel then proposed that the next special board meeting be held on July 23 and indicated that there will also be a need for a final special meeting on August 6 or 7, prior to the certification meeting set for August 24. Discussion ensued as to the dates and times of the meeting, with the dates of July 23 at 10:00 a.m. and August 6 at 10:00 a. m. being agreed upon. Vice Chairman Smart made a motion to accept these dates, which was seconded by Member Byers and passed by unanimous vote.

With there being no further business before the State Officers Electoral Board, Vice Chairman Smart moved to recess the State Officers Electoral Board until July 16, 2012 at 10:30 a.m. or until the call of the Chairman, whichever occurs first. Member Scholz seconded the motion which passed unanimously. The meeting recessed at 10:47 a.m.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sue A. Klos", written in dark ink over a horizontal line.

Sue Klos, Administrative Assistant II

A handwritten signature in cursive script, reading "James Tenuto", written in dark ink over a horizontal line.

James Tenuto, Assistant Executive Director

**Ostendorf/Hocker v. Polites  
12 SOEB GE 100**

**Candidate:** Daniel P. Polites

**Office:** State Representative, 108<sup>th</sup> District

**Party:** Democratic

**Objector:** Eugene Ostendorf, William D. Hocker

**Attorney For Objector:** John Fogarty

**Attorney For Candidate:** Michael Kasper

**Number of Signatures Required:** Not less than 500

**Number of Signatures Submitted:** 716

**Number of Signatures Objected to:** 103

**Basis of Objection:** Objectors allege that the Candidate has failed to file any notice of appointment by the appropriate committee as required by § 7-61.

Objectors further allege that Candidate's nominating petitions do not contain any statement to the effect that the signers are qualified electors of the 108<sup>th</sup> Representative District; rather, the Candidate's nominating petitions simply state that the signers are qualified primary electors "in the City of O'Fallon" instead of qualified primary electors "in the 108th Representative District."

Objectors also allege that the nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," and "Signer Resides Outside of the City of O'Fallon."

**Dispositive Motions:** Candidate's Motion to Strike and Dismiss the Objectors' Petition, Objectors' Response to Candidate's Motion to Strike and Dismiss,

**Binder Check Necessary:** Yes

**Hearing Officer:** David Herman

**Hearing Officer Findings and Recommendation:** A records examination commenced and was completed on June 26, 2012. Both parties were present at the records exam. The examiners ruled on objections to 103 signatures. 64 objections were sustained leaving 652 valid signatures, which is 152 signatures more than the required 500 minimum number of signatures.

Regarding the issue of whether the Candidate's filing of the Resolution to Fill a Vacancy in Nomination satisfies the requirement of submitting a "Notice of Appointment" contained in Section 7-61, the Hearing Officer noted that the Objector failed to cite any authority that would render the Resolution insufficient in terms of providing notice of the appointment by the Democratic Representative Committee of the 108<sup>th</sup> District. He therefore recommends striking that part of the Objector's petition.

Regarding the issue of the petition heading identifying the signers as residents of the City of O'Fallon rather than residents of the 108<sup>th</sup> Representative District, the Hearing Officer noted that the Objector failed to cite any authority that would require the disqualification of such signers simply because the prefatory part of the petition misidentified their actual residence, where such addresses (presumably correct) were provided by the petition signers opposite their signatures. The relevant question is whether the petition has been signed by the requisite number of registered voters and to answer this question, the statute requires that the petition signers provide their residence address. In further support of this position, the Hearing Officer noted that Section 8-8 does not provide a format for the heading of the candidate's nominating petition. Section 7-10 however, does, and it provides that such petition heading "be in substantially the following form" and signed by "qualified primary electors of the ..... party, in the ..... of ....., in the county of ..... and State of Illinois. The model form is directory to the extent that it requests information not required by the mandatory provisions, that is the requirement that the petition be signed by qualified voters residing within the District. In addition, Illinois courts have found substantial compliance to satisfy Section 7-10 where deviations therefrom were technical in nature. In this case, the statute does not require that the signers of a nominating petition for a member of the General Assembly declare in the heading of the petition that he or she is a qualified elector on the particular electoral district. On that basis, the hearing officer recommends striking that part of the Objector's petition.

Based on the results of the records examination, showing the candidate to have in excess of the statutory minimum of 500 signatures, and his conclusions stated above, the Hearing Officer recommends that the objection be overruled, and the Candidate's name be certified for the General Election ballot.

**Recommendation of the General Counsel:** I concur with the recommendation of the Hearing Officer.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD  
FOR THE HEARING AND PASSING UPON OBJECTIONS  
TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE  
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FROM THE 108TH  
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS**

In Re the Objections of

Eugene Ostendorf and William D. Hocker, )

Petitioners-Objectors, )

v. )

Daniel P. Polites, )

Respondent-Candidate. )

File No. 12 SOEB GE 100

**RECOMMENDATION OF HEARING EXAMINER**

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**I. PROCEDURAL HISTORY**

This matter commenced on June 11, 2012, when Eugene Ostendorf and William D. Hocker filed a "Verified Objectors' Petition" with the State Board of Elections (attached hereto as Exhibit A). The Objectors alleged, among other things, that the nomination papers of Daniel P. Polites, a candidate for nomination of the Democratic Party to the Office of Representative in the General Assembly from the 108<sup>th</sup> Representative District of the State of Illinois, were insufficient in that they were not in conformance with certain provisions of the Illinois Election Code. Specifically:

- The Objectors alleged that the Candidate's nomination papers did not meet the requirements of 10 ILCS 5/7-61 because "[t]he Candidate here has failed to file any notice of appointment by the appropriate committee as required by § 7-61".
- The Objectors alleged that the Candidate's nomination papers did not meet the requirements of 10 ILCS 5/8-8 because "the Candidate's nominating petitions simply state that the signers are qualified primary electors 'in the City of O'Fallon' instead of qualified primary electors 'in the 108<sup>th</sup> Representative District'" and because, in the

alternative, “numerous of the signers of the Candidate’s petitions are in fact not qualified primary electors in the City of O’Fallon” but rather they are residents of other cities.

- Finally, the Objectors alleged that, in any event, the Candidate has an insufficient number of valid signatures because some signers are not registered at the addresses shown opposite their names, some signers are not legal voters within the boundaries of the 108<sup>th</sup> Representative District, some signatures are not genuine, some signers signed more than once, some signatures are legally deficient for not providing a complete address, and some signers reside outside the City of O’Fallon.

On June 26, 2012, a records examination was conducted by staff of the State Board of Elections. The records review revealed that Candidate had collected a total of 716 signatures.<sup>1</sup> There were 103 objections reviewed at the records examination.<sup>2</sup> At the conclusion of the records examination, there were 561 signatures considered valid (64 objections were sustained, while 39 objections were overruled). The spreadsheet reflecting the results of the staff records exam is attached to this Recommendation as Exhibit B. After the records review, Candidate did have the required statutory minimum of not fewer than 500 signatures to be placed on the ballot.

Neither Candidate nor Objector submitted a Rule 9 Motion contesting the finding of the records examination conducted by the staff of the State Board of Elections, and therefore, the results of the record examination are undisputed by the parties.

On June 21, 2012, Candidate, through his attorney Michael J. Kasper, filed a “Motion to Strike” (attached hereto as Exhibit C) in response to the Verified Objectors’ Petition. Specifically, Candidate alleges that he complied with Section 7-61 because “[t]he fourth page of the Candidate’s nominating papers contains a document bearing a heading ‘Resolution to Fill a Vacancy in Nomination for the Office of Representative in the General Assembly’ which states, ‘The Democratic Representative District Committee of the 108<sup>th</sup> Representative District of the State of Illinois hereby appoints, designates, and nominates Daniel P. Polites \* \* \*.’” Candidate further alleged that the form of his petition sheets complied with Section 8-8 because “the prefatory language need only include a statement that the signers are registered voters of their party and set forth their municipalities and counties.”

On June 25, 2012, Objectors filed a “Response to Motion to Dismiss” (attached as Exhibit D). Objectors, relying on Wisnasky-Bettorf v. Pierce, 2012 IL 11253, assert that Candidate’s filing of a Resolution to Fill Vacancy as opposed to a Notice of Appointment falls short of Section 7-61’s requirements. They further assert that Candidate “now must be held accountable for the format he has chosen to use” with respect to the form of his petition sheets.

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<sup>1</sup> Objectors allege in their Verified Objectors’ Petition that 715 signatures were submitted by Candidate. However, no Rule 9 evidence was submitted by Objectors challenging this finding.

<sup>2</sup> Objectors made numerous objections based upon the argument that signers were not residents of O’Fallon. None of those objections were considered by the staff of the State Board of Elections during the records examination.



No factual disputes exist and therefore the parties agreed no evidentiary hearing was necessary and that the objection could be resolved based upon the parties filings relating to the pending motion.

## **II. Candidate's Motion to Strike**

### **A. Candidate has failed to file a Notice of Appointment as required by 7-61 of the Election Code.**

#### **1. Candidate's argument**

Candidate claims that, while Objectors have alleged that "[t]he Candidate here failed to file any notice of appointment by the appropriate committee", "[a] cursory review of the Candidate's nomination papers clearly indicates that this allegation is simply incorrect." Candidate points out that the fourth page of his nominating papers contained a "Resolution to Fill a Vacancy in Nomination for the Office of Representative in the General Assembly" which provided:

BE IT RESOLVED, on this 18<sup>th</sup> day of May, 2012, that the Democratic Representative District Committee of the 108<sup>th</sup> Representative District of the State of Illinois hereby appoints, designates and nominates Daniel P. Politics, who resides at 1106 Shadow Ridge Crossing, O'Fallon, Illinois Zip Code 62269, in the 108<sup>th</sup> Representative District of the State of Illinois, and who is a member of the Democratic Party, to fill the vacancy in nomination , and be the Democratic nominee, for the office of Representative in the General Assembly from the 108<sup>th</sup> Representative District of the State of Illinois for the General Election to be held on November 6, 2012.

#### **2. Objectors' Argument**

In response to Candidate's Motion, Objectors cite to Wisnasky-Bettorf v. Pierce, 2012 IL 11253, and relies on the simple proposition that "the Candidate has filed a Resolution to Fill the Vacancy in Nomination, but not a Notice of Appointment." Objectors argue that Candidate has blurred the distinction between a "resolution to fill a vacancy in nomination" and a "notice of appointment"

#### **3. Analysis**

In Wisnasky-Bettorf v. Pierce, 2012 IL 11253, our Illinois Supreme Court clarified that the ninth paragraph of Section 7-61 "added specific requirements for a vacancy in nomination when no established political party candidate was printed on the general primary ballot." Wisnasky-Bettorf, 2012 IL 11253 at ¶20. That paragraph provides:

If the name of no established political party candidate was printed on the consolidated primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be created which may be filled in accordance with the requirements

of this Section. If the name of no established political party candidate was printed on the general primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party and only if that designated person files nominating petitions with the number of signatures required for an established party candidate for that office within 75 days after the day of the general primary. The circulation period for those petitions begins on the day the appropriate committee designates that person. **The person shall file his or her nominating petitions, statements of candidacy, notice of appointment by the appropriate committee, and receipt of filing his or her statement of economic interests together.** These documents shall be filed at the same location as provided in Section 7-12. The electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under this paragraph.

10 ILCS 5/7-61 (emphasis added). Our Supreme Court observed that paragraph 9 reflected a legislative intent that “a candidate must show, basic level, ‘grassroots’ support” by requiring a candidate to get an appropriate amount of signatures, and the Court also recognized “this state’s position in favor of ballot access for candidates running for public office.” Wisnasky-Bettorf, 2012 IL 11253 at ¶22.

Although “paragraph 9 does not require the filing of a resolution”, Wisnasky-Bettorf, 2012 IL 11253 at ¶21, Objectors fail to cite to any legal authority to support their claim that a resolution to fill a vacancy in nomination cannot otherwise satisfy the requirement of filing a notice of appointment. Clearly, the resolution in this case provides notice of Candidate’s appointment by the appropriate committee. Accordingly, the Hearing Examiner recommends that the Board find that Candidate’s filing of a resolution in this matter satisfies the requirements for filing a notice of appointment as required by 7-61.

- B. Candidate’s nominating petitions simply state that the signers are qualified primary electors ‘in the City of O’Fallon’ instead of qualified primary electors ‘in the 108<sup>th</sup> Representative District’ and in the alternative, “numerous of the signers of the Candidate’s petitions are in fact not qualified primary electors in the City of O’Fallon” but rather they are residents of other cities.**

**1. Candidate’s argument**

Candidate submits that Objectors’ claim that his nominating petitions “do not contain any statement [in the introductory paragraph] to the effect that the signers are qualified electors in the 108<sup>th</sup> Representative District” “is simply a misstatement of the law.” Candidate argues that Section 8-8 does not provide a suggested format for nominating petitions, but Section 7-10 does. He reasons that nothing in the format provided by Section 7-10 includes a statement that the signers are registered or qualified voters of the particular election district.

## 2. Objector's argument

In response to Candidate's Motion, Objectors' argument is "[t]he petitions purport to be signed by individuals residing in the City of O'Fallon, rather than of the 108<sup>th</sup> Representative District", and "the Candidate's petitions are replete with the signatures of individuals who, on their face, do not reside in the City of O'Fallon."

## 3. Analysis

Objectors contend that "[t]he Candidate here would ask this Electoral Board to turn a blind eye to what his petitions actually say – and to ignore the fact that signers purport to be only electors of O'Fallon." Objectors have failed to cite any caselaw to support their claim that an error in designating the signers as being from the City of O'Fallon, as opposed to qualified electors of the 108<sup>th</sup> Representative District, in the prefatory portion of the petition requires the nominating papers to be stricken in their entirety.

"[B]allot access is a substantial right and not lightly to be denied." Vestrup v. DuPage County Election Comm'n, 335 Ill. App. 3d 156, 164 (2d Dist. 2004) (quoting Reyes v. Bloomington Township Electoral Board, 265 Ill. App. 3d 69, 71 (2d Dist. 1994)). The Election Code is designed to balance a candidate's right to have his name appear on the ballot with the need to preserve the integrity of the petition process and to encourage qualified voters' participation. Siegel v. Lake County Officers Electoral Board, 385 Ill. App. 3d 452, 460 (2d Dist. 2008). Before a candidate's name is removed from a ballot, both the rights of the candidate and the voters must be weighed, and the removal must have "a rational relationship to a legitimate governmental objective." Huskey v. Municipal Officers Electoral Board, 156 Ill. App. 3d 201, 205 (1st Dist. 1987). "A minor error in a candidate's nominating papers should not result in a candidate's removal from the ballot. [Citation.] Moreover, substantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation that does not affect the legislative intent to guarantee a fair and honest election. [Citation.]" Siegel, 385 Ill. App. 3d at 461.

Section 8-8 of the Election Code provides, in pertinent part:

All petitions for nomination for the office of Representative in the General Assembly shall be signed by at least 500 but not more than 1,500 of the qualified primary electors of the candidate's party in his or her representative district.

Opposite the signature of each qualified primary elector who signs a petition for nomination for the office of State Representative or State Senator such elector's address shall be written or printed. The residence address required to be written or printed opposite each qualified primary elector's name shall include the street address or rural route number of the signer, as the case may be, as well as the signer's county and city, village or town.

Thus, the clear language of Section 8-8 provides that the relevant inquiry here is whether Candidate's petition has been "signed by at least 500 but not more than 1,500 of the qualified primary electors of the candidate's party in his or her representative district." In order to aid in that determination, Section 8-8 requires each signer's residence address to be written or printed opposite his or her name.

That the relevant inquiry is whether Candidate has secured by a sufficient number of signatures from "qualified primary electors of the candidate's party in his or her representative district" (as opposed to the form that is used) is reinforced by the fact that Section 8-8 does not provide a suggested format for nominating petitions. Section 7-10, however, does provide a model or template for nominating petitions in most other situations. Section 7-10 provides that a petition for nomination should be in "substantially the following form".<sup>3</sup> That template states that the petitions are to be signed by "qualified primary electors of the ..... party, in the ..... of ....., in the county of ..... and State of Illinois". 10 ILCS 5/7-10.

If Section 7-10 were to apply to this case, it is clear that the petition form used would not result in the sheets being invalidated. "The word 'substantially' is a relative term and must be interpreted in accordance with its context. Here, 'substantially' means in the main, essentially, practically, nearly, almost, or virtually." O'Connor v. Cook County Officers Electoral Board, 281 Ill. App. 3d 1108, 1112 (1st Dist. 1996). The model form "is directory to the extent that it requests information not required by the mandatory provision." Madden v. Schumann, 105 Ill. App. 3d 900, 902 (1st Dist. 1982). Hence, Illinois courts have found substantial compliance to satisfy Section 7-10 where deviations therefrom were technical in nature. See Pascente v. County Officers Electoral Board, 373 Ill. App. 3d 871 (1st Dist. 2007) (substantial compliance with section 7-10 where candidate's nominating papers identified the office sought as "MEMBER OF THE REGIONAL BOARD OF SCHOOL TRUSTEES, TOWNSHIP 39, RANGE 12 of Cook County" instead of stating "39 North" and "12 East"); Courtney v. County Officers Electoral Board, 314 Ill. App. 3d 870 (1st Dist. 2000) (finding that the candidate had substantially complied with section 7-10 even though he failed to simultaneously file his nominating petitions with his statement of candidacy); Sullivan v. County Officers Electoral Board of DuPage County, 225 Ill.App.3d 691 (2d Dist. 1992) (substantial compliance with section 7-10 requirement that statement of candidacy must identify the office sought was achieved when statement of candidacy erroneously listed the office sought as precinct committeeman for a non-existent precinct because any confusion about the office sought was easily resolved); Madden v. Schumann, 105 Ill. App. 3d 900 (1st Dist. 1982) (candidate's omission of "is a registered voter" from the circulator's oath, as required by section 7-10, was a technical violation of the Election Code that did not warrant removal from the ballot); Panarese v. Hosty, 104 Ill. App. 3d 627 (1st Dist. 1982) (substantial compliance with section 7-10 requirement that a circulator's address must be on the petition sheets was achieved when a circulator's address was omitted from one page of the petition sheets but included on another); Stevenson v. County Officers Electoral Board, 58 Ill. App. 3d 24 (3d Dist. 1978) (substantial compliance with section 7-10 was achieved when some petition sheets described office sought as "Superintendent of an Educational Service Region" and other pages referred to "Superintendent of an Educational Service Region, Will County, Illinois" because there was no confusion); Lewis v. Dunne, 63 Ill.2d 48 (1976) (substantial compliance with section 7-10 requirement that

vacancies must be designated in both the statement of candidacy and the petition sheets was achieved when statement of candidacy did not reference office sought by candidate was a vacancy while petition sheets did reference the vacancy because there was no confusion); Madison v. Sims, 6 Ill. App. 3d 795 (1st Dist. 1972) (substantial compliance with section 7-10 found where printed introductory language of petition of candidate for State Representative stated that signers were duly qualified electors residing in the legislative district).

Here, the inclusion of “City of O’Fallon” in the prefatory section of the petition sheets in this case is merely a technical error that would constitute substantial compliance with Section 7-10. However, Section 8-8 does not provide a suggested form for nominating petitions, and it does not require that the signers of a nominating petition for a member of the General Assembly declare in the heading of the nominating petition that he or she is qualified primary elector of a particular electoral district. All that Section 8-8 requires is that the signers be “qualified primary electors of the candidate’s party in his or her representative district.”

Additionally, here, as in Madison v. Sims, 6 Ill. App. 3d 795 (1st Dist. 1972), the signatures are followed with a printed section in which the individual who procured the signatures verified under oath that such signatures were valid and that the petitioners resided in the legislative district. Thus, the printed sections of the petition, read together with the handwritten sections, warrant a finding that the form of Candidate’s nominating papers is in substantial compliance, if not strict compliance, with Section 8-8.

It is clear from the face of Candidate’s petition that he was seeking nomination to the office of State Representative for the 108<sup>th</sup> Representative District. Our Illinois Supreme Court has stated that a candidate is entitled to have his name placed on the ballot if “there was no basis for confusion as to the office for which the nominating papers were filed.” Lewis v. Dunne, 63 Ill. 2d 48, 53 (1976). There has been no allegation relating to any voter confusion relating to the Candidate or the office he is seeking. The only confusion that could even be alleged is the conflict between the address of certain petition signers.<sup>4</sup> This confusion is clarified when each individual signer listed his or her respective address opposite his or her name on the petition, consistent with the requirements of Section 8-8. However, even if this confusion continued to exist, such confusion has no impact upon the integrity of the election process or validity of the petition signatures as long as the address listed across from the individual signer is that signer’s registered address and the address is within the appropriate district<sup>5</sup>.

As such, the Hearing Examiner recommends that the Board find that Candidate’s petitions are in substantial compliance with Section 8-8 of the Election Code despite Candidate’s

---

<sup>4</sup> The petition contains signature-specific designations of each respective signer’s address including “city, town or village”. The circulators’ affidavits also attest that the signers are qualified voters in the political division in which candidate is seeking office [State Representative District 108]. Finally, the circulators’ affidavits attest that each signer’s “respective residences are correctly stated, as set forth above.”

<sup>5</sup> Objectors filed objections alleging that certain signatures were invalid because “signer not registered at address shown”, “signer not in district”, and/or “incomplete address”. 561 signatures were considered valid following the records examination.


inclusion of "City of O'Fallon" in the prefatory portion of the petitions and that the signers are not required to residents of the City of O'Fallon.

### Conclusion

In summary, the Hearing Examiner recommends that the Board order that the 64 signatures that were objected to and sustained be excluded. Accordingly, the Hearing Officer recommends that the Board order that the 64 signatures shall not be included in Candidate's total number of signatures submitted in his nominating papers. As Candidate initially submitted 716 signatures, Candidate will have 652 signatures. As the minimum numbers of signatures required for nomination is not less than 500, Candidate meets the signature requirement for nomination.

Having recommended a finding that Candidate's Petitions are otherwise in substantial compliance with the Election Code and that Candidate has at least the required number of signatures for nomination, the Hearing Examiner recommends that the Board order the name of Daniel P. Polites be printed upon the General Election Ballot as a candidate for election to the Office of Representative in the General Assembly from the 108<sup>th</sup> Representative District of the State of Illinois to be voted for at the general election to be held on November 6, 2012.

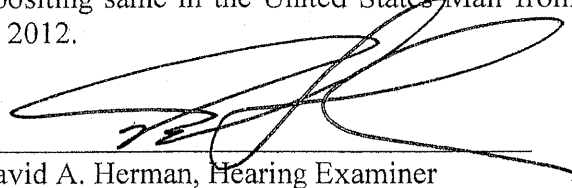
DATED: 7/6/12



David A. Herman, Hearing Examiner

**CERTIFICATE OF SERVICE**

Service of the foregoing document was made by sending a copy via e-mail transmission and by mailing a copy thereof, in a sealed envelope, postage fully prepaid, addressed to all parties listed on the previous page and by depositing same in the United States Mail from the office of the undersigned this \_\_\_\_ day of July, 2012.

A handwritten signature in black ink, appearing to read 'DAH', is written over a horizontal line.

David A. Herman, Hearing Examiner

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL  
ASSEMBLY FROM THE 108<sup>th</sup> REPRESENTATIVE DISTRICT OF THE STATE OF  
ILLINOIS**

Eugene Ostendorf and	)
William D. Hocker,	)
	)
Petitioner-Objectors,	)
	)
vs.	)
	)
Daniel P. Polites,	)
	)
Respondent-Candidate.	)

12 JUN 11 PM 4:03  
PRINCIPAL OFFICE  
STATE BOARD OF ELECTIONS

**VERIFIED OBJECTORS' PETITION**

Now come Eugene Ostendorf and William D. Hocker (hereinafter referred to as the "Objectors"), and states as follows:

1. Eugene Ostendorf resides at 7487 State Route 177, Okawville, Illinois, 62271, in the One Hundred Eighth Representative District of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Election to the Office of Representative in the General Assembly from the One Hundred Eighth Representative District of the State of Illinois, are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

2. William D. Hocker resides at 1201 El Kay Ct. #15, Highland, Illinois, 62249, in the One Hundred Eighth Representative District of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers



for a Candidate for Election to the Office of Representative in the General Assembly from the One Hundred Eighth Representative District of the State of Illinois, are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

3. Your Objectors make the following objections to the nomination papers of Daniel P. Polites (“the Nomination Papers”) as a candidate for nomination of the Democratic Party to the Office of Representative in the General Assembly from the 108<sup>th</sup> Representative District of the State of Illinois, and files the same herewith, and states that the said Nomination Papers are insufficient in law and in fact for the following reasons:

4. Your Objectors state that in the 108<sup>th</sup> Representative District of the State of Illinois the signatures of not less than 500 duly qualified, registered, and legal voters of the said 108<sup>th</sup> Representative District of the State of Illinois are required. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise be executed in the form and manner required by law.

5. Your Objectors state that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings made contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.

**The Candidate Has Failed To File A Notice Of Appointment As Required By § 7-61 Of The Election Code**

6. The name of no candidate of the Democratic Party appeared on the ballot for nomination to the Office of Representative in General Assembly for the 108<sup>th</sup> Representative District at the Primary Election. As a result, a vacancy in nomination was created that could be filled within 75 days of the Primary Election pursuant to § 8-17 and § 7-61 of the Election Code.

Any candidate designated to fill the vacancy in nomination must file the following documents together: (1) the candidate's nominating petitions; (2) statement of candidacy; (3) notice of appointment by the appropriate committee; and (4) receipt of filing a statement of economic interests. 10 ILCS 5/7-61.

7. The Candidate here has failed to file any notice of appointment by the appropriate committee as required by § 7-61, and therefore his Nomination Papers are invalid and must be stricken.

**The Candidate Has Failed To File Any Petition Purporting To Be Signed By Qualified Primary Electors Of The 108<sup>th</sup> Representative District**

8. The Candidate's nominating petitions do not contain any statement to the effect that the signers are qualified electors of the 108<sup>th</sup> Representative District. Section 5/8-8 of the Election Code requires that a candidate the signatures of at least 500 "qualified primary electors of the candidate's party in his or her representative district . . ." 10 ILCS 5/8-8. Rather, the Candidate's nominating petitions simply state that the signers are qualified primary electors "in the City of O'Fallon" instead of qualified primary electors "in the 108<sup>th</sup> Representative District." The City of O'Fallon is both within the 114<sup>th</sup> Representative District and the 108<sup>th</sup> Representative District. Because the signers of the Candidate's nominating petitions do not purport to be "qualified primary electors of the candidate's party in his or her representative district," the Candidate's Nomination Papers are fatally flawed and therefore must be stricken.

9. In addition, and in the alternative, while the Candidate's petitions purport to be signed by qualified primary electors "in the City of O'Fallon," numerous of the signers of the Candidate's petitions are in fact not qualified primary electors in the City of O'Fallon. On the face of the Candidate's nominating petitions, numerous of Candidate's petition signers purport to be residents of a number of cities other than O'Fallon such as Troy, Collinsville, St. Jacob, and

many others. Such signatures, being false on their face, are invalid and must be stricken, as set forth in the Appendix Recapitulation under the column designated "Signer Resides Outside of City of O'Fallon (F)" attached hereto and made a part hereof.

**Regardless, The Candidate Has An Insufficient Number Of Signatures To Qualify For Office**

10. Your Objectors state that the Candidate has filed 83 petition signature sheets containing a total of 715 signatures of allegedly duly qualified, legal, and registered voters of the 108<sup>th</sup> Representative District of the State of Illinois.

11. Your Objectors further state that the aforesaid nomination papers contain the names of numerous persons who are not in fact duly qualified, registered, and legal voters at the addresses shown opposite their names in the 108<sup>th</sup> Representative District of the State of Illinois and their signatures are therefore invalid, as more fully set forth in the Appendix Recapitulation under the column designated "SIGNER NOT REGISTERED AT ADDRESS SHOWN (A)," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

12. Your Objectors further state that the said nomination papers contain the names of numerous persons who have signed said petition but who are not, in fact, duly qualified, registered, and legal voters at addresses that are located within the boundaries of the 108<sup>th</sup> Representative District of the State of Illinois as shown by the addresses they have given on the petition, as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER NOT IN DISTRICT (B)," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

13. Your Objectors further state that the said nomination papers contain the names of numerous persons who did not sign the said nomination papers in their own proper persons, and

that the said signatures are not genuine, as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNATURE NOT GENUINE (C)," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

14. Your Objectors further state that said nominating petition contains the signatures of various individuals who have signed the petition more than once, and such duplicate signatures are invalid, as more fully set forth in the Appendix-Recapitulation, under the column designated "SIGNED PETITION MORE THAN ONCE (D)," with a further notation therein of the sheet and line numbers of the alleged duplicate signature(s) as Sh. \_\_\_\_, L. \_\_\_\_, attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

15. Your Objectors state that various purported signatures are legally defective and deficient in that the address shown next to said voter's name is incomplete, as more fully set forth in the Appendix-Recapitulation, under the column designated "Incomplete Address (E)" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

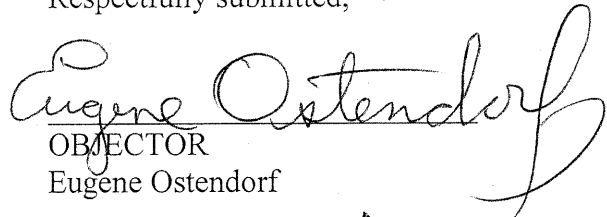
16. Your Objectors state that various purported signatures are legally defective and deficient in that those signers reside outside of the City of O'Fallon, despite the statement at the top of the Candidate's nominating petitions that all such signers reside within the City of O'Fallon, as more fully set forth in the Appendix-Recapitulation under the column designated "Signer Resides Outside of City of O'Fallon (F)" attached hereto and made a part hereof.


17. Your Objectors state that the nomination papers herein contested consist of various sheets supposedly containing the valid and legal signatures of 715 individuals. The

individual objections cited herein with specificity reduce the number of valid signatures below the statutory minimum of 500.

WHEREFORE, your Objectors pray that the purported nomination papers of Daniel P. Polites as a candidate of the Democratic Party for the office of the Representative in the General Assembly from the 108<sup>th</sup> Representative District of the State of Illinois be declared by this Honorable Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the name of Daniel P. Polites as a candidate of the Democratic Party for the office of the Representative in the General Assembly from the 108<sup>th</sup> Representative District of the State of Illinois BE NOT PRINTED on the OFFICIAL BALLOT at the General Election to be held on November 6, 2012.

Respectfully submitted,

  
OBJECTOR  
Eugene Ostendorf

  
OBJECTOR  
William D. Hocker

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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

Ostendorf & Hocker,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	No. 12-SOEB-GE-100
	)	
Polites,	)	
	)	
Respondent-Candidate.	)	

MOTION TO STRIKE

NOW COMES, Candidate, by and through his attorney, Michael J. Kasper, and moves to strike paragraphs six through nine of the Objector's Petition and in support thereof states as follows:

- A. The Candidate's Nomination Papers Comply With Section 7-61 of the Election Code.

In Paragraph 6 and 7 of the Objector's Petition, the Objector claims (incorrectly) that the "Candidate here failed to file any notice of appointment by the appropriate committee." Obj. Pet. ¶ 7. A cursory review of the Candidate's nomination papers clearly indicates that this allegation is simply incorrect.

The fourth page of the Candidate's nominating papers contains a document bearing a heading "Resolution to Fill a Vacancy in Nomination for the Office of Representative in the General Assembly." The fourth paragraph of that document states: "The Democratic Representative District Committee of the 108<sup>th</sup> Representative District of the State of Illinois hereby *appoints*, designates, and nominates Daniel P. Polites..." (emphasis added). While Section 7-61 provides that a candidate appointed to fill a vacancy in nomination shall file his or her "notice of appointment by the appropriate committee" with the other nomination papers, the Election Code nowhere provides a

form, a suggested format or any description whatsoever about the content of this document. 10 ILCS 5/7-61. Regardless, it is hard to imagine a sentence more concisely and directly complying with this provision than the one appearing in the Candidate's nomination papers whereby the "appropriate committee" provides "notice" of the Candidate's "appointment" to fill the vacancy in nomination ("The ...Committee...hereby...appoints...Daniel P. Politics...").

It is worth noting that the Supreme Court has recently ruled that the requirements for filling vacancies in nomination occurring where no candidate appears on the primary election ballot differ from those occurring after the primary. *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253 (Ill. S.Ct. March 22, 2012). In that case, the objector challenged the appointment of a candidate to fill a vacancy in the Republican nomination for a county office, where as here, no candidate appeared on the Republican ballot at the primary election. *Id.* at 2. The objection claimed that "resolution/certificate of appointment" filed by the committee was invalid because it was not filed within three days of the committee's action appointing the candidate. *Id.* The Supreme Court rejected that argument by concluding that the filling of a vacancy in nomination where no candidate appeared on the primary ballot "does not require the filing of a resolution..." *Id.* at 7. In short, the Supreme Court ruled that it did not matter whether the resolution was filed within three days because it need not have been filed at all.

The Court's reasoning is instructive in this case. The Court concluded that a resolution was not necessary because the "legislature intended that in situations where there is no original candidate on the ballot and no write-in, a candidate must now show, basic level, 'grassroots' support" by filing nominating petitions. *Id.* Since the statute is

now intended to ensure that the candidate demonstrate a sufficient modicum of support withing the community in which he or she seeks to be nominated, the Supreme Court concluded that the resolution is not necessary to effectuate a nomination.

This, of course, is not dispositive in this case, because here the candidate did file a notice of appointment with the election authority in full compliance with Section 7-61. Paragraphs 6 and 7 should be stricken.

B. The Heading of the Candidate's Petition Sheets Satisfies  
The Election Code.

Paragraphs 8 and 9 should likewise be stricken because they are based upon an incorrect statement of the law. In Paragraph 8, Objector states that the Candidate's nominating petitions "do not contain any statement to the effect that the signers are qualified electors in the 108<sup>th</sup> Representative District." Obj. Pet. ¶ 8. By this, Objector means that the petitions ought have a statement in the introductory paragraph stating that the signer are qualified primary electors of the district. This is simply a misstatement of the law.

As the Objector points out, Section 8-8 only requires petition signers to actually be qualified primary voters of the appropriate district. 10 ILCS 5/8-8 ("All petitions for nomination...shall be signed by...qualified primary electors of the candidate's party in his or her...district."). The Candidate does not dispute that the petition signers must, in fact, be qualified primary voters of the appropriate district. However, nothing in the Election Code requires a statement to that effect in the introductory paragraph of a nominating petition. In fact, the Code quite clearly provides otherwise.



While Section 8-8 does not provide a section suggested format for nominating petitions, Section 7-10 does. Section 7-10 provides that a nominating petition's introductory paragraph read as follows:

We, the undersigned, members of and affiliated with the .... party and qualified primary electors of the .... party, in the .... of ....., in the county of .... and State of Illinois, do hereby petition that the following named person or persons shall be a candidate or candidates of the .... party for the nomination for (or in case of committeemen for election to) the office or offices hereinafter specified, to be voted for at the primary election to be held on (insert date).

10 ILCS 5/7-10. Nothing in this format includes a statement that the signers are registered or qualified voters of the particular election district whether it be a congressional district (which is governed by this Section), ward, library district or any other election district. Instead, the prefatory language need only include a statement that the signers are registered voters of the their party and set forth their municipalities and counties.

The Candidate's petitions do precisely that. In fact, except for the filling-in of the blanks, the Candidate's form is verbatim the same as set forth in Section 7-61. It should not be left unsaid that the Objector has challenged the language that exactly copies the statute. Nothing could be further from a well-founded complaint.

The same goes for the residential addresses. Obviously the Candidate preprinted the heading (in order to comply with the statutory requirement that the heading of each sheet be the "same") and signers who live in a different municipality clearly indicated so on the line on which their signature is affixed. This is neither confusing nor hard to follow. Indeed, had the Candidate used a different sheet reflecting a different

municipality on each sheet, the Objector would doubtless be complaining that the headings are not the same.

Even if this Board finds that the municipality information set forth in the introductory paragraph is not in full compliance with the requirements of the Code, the petitions are nonetheless valid because they substantially comply. Substantial compliance can satisfy a mandatory provision of the Election Code, however, as even a mandatory provision does not require strict compliance. *Siegel v. Lake County Officers Electoral Board*, 385 Ill.App.3d 452, 460 (2008). This court has held that substantial compliance with the circulator's affidavit requirement saves a petition sheet from being rendered invalid. See, e.g., *Brennan v. Kolman*, 335 Ill.App.3d 716, 719 (2002)(circulators' affidavits that failed to state that voters who signed the petition were registered voters substantially complied with Election Code, where opening line of petition stated that voters were registered); see also *Nolan v. Cook County Officers Electoral Board*, 329 Ill.App.3d 52, 54, 56–57 (2002) (finding circulators' affidavits that failed to state that petition signers were qualified primary voters substantially complied with section 8–8 where prefatory language on the petition indicated that signers were “qualified primary voters”).

In considering provisions of the Election Code, we are mindful that “ballot [access] is a substantial right and not to be lightly denied.” *Cunningham v. Schaefflein*, 2012 IL App (1st) 120529, --- N.E.2d ----, 2012 WL 1592200 (1 Dist., 2012) citing *Siegel*, 385 Ill.App.3d at 460–61. The *Cunningham* court also recognized that “[o]ur supreme court has instructed we should ‘tread cautiously when construing statutory language which restricted the people's right to endorse and nominate the candidate of

their choice.” *Id.* quoting *Lucas v. Lakin*, 175 Ill.2d 166, 176 (1997).

Here, each signers complete address is located on the face of the petition – in the most logical place, in the line provided for that purpose. Thus, even if the municipality is missing for some signers in the introductory paragraph, the petition is nonetheless valid because the information is provided in the body of the petition.

Paragraphs 8 and 9 are without merit and should be stricken.

WHEREFORE, for the foregoing reasons, the Candidate respectfully prays that the Motion to Strike Paragraphs 7 through 9 be granted.

Respectfully submitted,  
Candidate

By: \_\_\_\_\_  
One of his attorneys

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**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL  
ASSEMBLY FROM THE 108<sup>th</sup> REPRESENTATIVE DISTRICT OF THE STATE OF  
ILLINOIS**

<b>Eugene Ostendorf and</b>	)
<b>William D. Hocker,</b>	)
	)
<b>Petitioner-Objectors,</b>	)
	)
<b>vs.</b>	)
	)
<b>Daniel P. Polites,</b>	)
	)
<b>Respondent-Candidate.</b>	)

**RESPONSE TO MOTION TO DISMISS**

Now come the Objectors, by and through counsel, and for their Response to the Candidate's Motion to Strike paragraphs 6 through 9 of the Objector's Petition, and states as follows:

1. The Candidate seeks to blur the distinction in § 7-61 between a "resolution to fill a vacancy in nomination" ("Resolution") and a "notice of appointment" ("Notice of Appointment"), in an effort to excuse the errant filing of his nominating papers. 10 ILCS 5/7-61. Section 7-61 governs how vacancies in nomination must be filled. *Id.* Where the vacancy in nomination is the result of the failure of a party to nominate in the primary, any candidate designated to fill the vacancy in nomination must file the following documents together: (1) the candidate's nominating petitions; (2) statement of candidacy; (3) notice of appointment by the appropriate committee; and (4) receipt of filing a statement of economic interests. 10 ILCS 5/7-61.
2. The Illinois Supreme Court recently reiterated that where a vacancy is created by the fact that no candidate was nominated at the Primary Election, the only portion of §7-61 that

is applicable is the ninth paragraph of that Section, and not the first eight. *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253. The first eight paragraphs of § 7-61 are applicable when a vacancy is created in other circumstances, such as the resignation or death of a candidate. In those circumstances, a resolution to fill the vacancy in nomination must be transmitted to the State Board of Elections within three days of the date the new candidate is nominated. 10 ILCS 5/7-61.

3. Here, the Candidate has filed a Resolution to Fill the Vacancy in Nomination, but not a Notice of Appointment. Thus, the Candidate has failed to follow the correct portion of §7-61, and his nominating papers are therefore faulty.

4. The Candidate also seeks to strike the Objector's Petition insofar as the Objector has taken issue with the format of the Candidate's petitions. The petitions purport to be signed by individuals residing in the City of O'Fallon, rather than of the 108<sup>th</sup> Representative District. While it would certainly be possible for the Candidate to access the ballot with petitions contain enough valid signatures solely from the City of O'Fallon, that is not the case here. In fact, the Candidate's petitions are replete with the signatures of individuals who, on their face, do not reside in the City of O'Fallon.

5. The Candidate here would ask this Electoral Board to turn a blind eye to what his petitions actually say – and to ignore the fact that signers purport to be only electors of O'Fallon. While all of the headings used by the Candidate are uniform, and the Candidate has used the form prescribed by § 7-10, the Candidate has also affirmatively “filled in the blanks” in the format prescribed by § 7-10. He now must be held accountable for the format he has chosen to use.

6. The verbiage used by the Candidate for his petitions must be given effect, and he must be held to it. And accordingly, the Candidate's Motion to Strike on this point must be denied.

WHEREFORE, for these reasons, the Candidate's Motion to Dismiss must be denied.

Respectfully submitted,  
OBJECTORS

By: /s/ John G. Fogarty, Jr. /s/  
One of their Attorneys

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(773) 681-7147 (fax)  
[john@fogartylawoffice.com](mailto:john@fogartylawoffice.com)

## VERIFICATION

The undersigned as Objector, first being duly sworn on oath, now deposes and says that [he] [she] has read this VERIFIED OBJECTOR'S PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that [he] [she] verily believes the same to be true and correct.

OBJECTOR  
Eugene Ostendorf

County of \_\_\_\_\_ )  
 ) ss.  
 State of Illinois )

Subscribed to and Sworn before me, a Notary Public, by \_\_\_\_\_, the  
Objector, on this the \_\_\_\_\_ day of June, 2012, at \_\_\_\_\_, Illinois.

\_\_\_\_\_  
NOTARY PUBLIC (SEAL)

My Commission expires: \_\_\_\_\_

## VERIFICATION

The undersigned as Objector, first being duly sworn on oath, now deposes and says that [he] [she] has read this VERIFIED OBJECTOR'S PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that [he] [she] verily believes the same to be true and correct.

## OBJECTOR

William D. Hocker

County of \_\_\_\_\_ )  
 )  
 State of Illinois ) ss.

Subscribed to and Sworn before me, a Notary Public, by \_\_\_\_\_, the  
Objector, on this the \_\_\_\_\_ day of June, 2012, at \_\_\_\_\_, Illinois.

\_\_\_\_\_  
NOTARY PUBLIC (SEAL)

My Commission expires: \_\_\_\_\_